

STATE OF MICHIGAN
COURT OF APPEALS

WILLIAM T. DEXTER and AURELIA J.
DEXTER,

UNPUBLISHED
October 17, 2006

Plaintiffs/Counter-Defendants-
Appellants,

v

VILLAGE OF LAKEVIEW,

No. 270168
Montcalm Circuit Court
LC No. 05-006132-CH

Defendant/Counter-Plaintiff-
Appellee.

Before: Cavanagh, P.J., and Bandstra and Owens, JJ.

PER CURIAM.

Plaintiffs appeal as of right from a circuit court order granting defendant's motion for summary disposition. We reverse and remand. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

This action involves a dispute over property at the border of the parties' adjoining lands. The trial court ruled that because defendant had held title to its property for over 40 years, plaintiffs' claim was extinguished under the Marketable Record Title Act (MRTA), MCL 565.101 *et seq.*

The trial court's ruling on a motion for summary disposition is reviewed de novo. *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000). A motion brought under MCR 2.116(C)(10) tests the factual support for a claim. In ruling on such a motion, the trial court must consider not only the pleadings, but also depositions, affidavits, admissions and other documentary evidence, MCR 2.116(G)(5), and must give the benefit of any reasonable doubt to the nonmoving party, being liberal in finding a genuine issue of material fact. Summary disposition is appropriate only if the opposing party fails to present documentary evidence establishing the existence of a material factual dispute. *Smith v Globe Life Ins Co*, 460 Mich 446, 455; 597 NW2d 28 (1999).

The MRTA "provides that, subject to certain exceptions regarding prior claims of interest . . . , any person who has an unbroken chain of title for over forty years has marketable record title in that interest." *Fowler v Doan*, 261 Mich App 595, 599; 683 NW2d 682 (2004). The act provides, in pertinent part:

Any person, having the legal capacity to own land in this state, who has an unbroken chain of title of record to any interest in land for 20 years for mineral interests and 40 years for other interests, shall at the end of the applicable period be considered to have a marketable record title to that interest, subject only to claims to that interest and defects of title as are not extinguished or barred by application of this act and subject also to any interests and defects as are inherent in the provisions and limitations contained in the muniments of which the chain of record title is formed and which have been recorded . . . during the 20-year period for mineral interests and the 40-year period for other interests. [MCL 565.101.]

A person has an unbroken chain of title where public records show a conveyance occurring “not less than 20 years in the past for mineral interests and 40 years for other interests, which conveyance . . . purports to create the interest in that person, with nothing appearing of record purporting to divest that person of the purported interest.” MCL 565.102(a). Once a person acquires marketable title, any claim or interest which depends for its existence upon an act, transaction, event, or omission occurring outside the relevant term of years is of no legal effect. MCL 565.103. Such a claim or interest may be preserved, however, by filing appropriate notice of the claim within the applicable 20-year or 40-year period. *Id.*

Defendant has shown a recorded interest dating back to 1961. However, it is undisputed that plaintiffs’ title was recorded in 1996, before the 40-year period expired in 2001. That alone was sufficient to defeat defendant’s argument under the MRTA, which was premised on the assumption that plaintiffs’ deed was unrecorded.

Defendant argues that even if the trial court erred in its reliance on the MRTA, its ruling should nonetheless be affirmed because defendant could prove a right to the land under the doctrine of acquiescence or adverse possession. However, defendant presented no evidence to show that it and plaintiffs, or plaintiffs’ predecessors in interest, agreed to treat any particular boundary as the property line. See *Walters v Snyder*, 239 Mich 453, 458; 608 NW2d 97 (2000). Further, defendant presented no evidence to show that “its possession [was] actual, visible, open, notorious, exclusive, hostile, under cover of claim or right, and continuous and uninterrupted for the statutory period of fifteen years.” *West Michigan Dock & Market Corp v Lakeland Investments*, 210 Mich App 505, 511; 534 NW2d 212 (1995). While it can be presumed that defendant operated a sewage facility somewhere on its property, there is no evidence regarding the nature and extent of its use of the disputed portion. Therefore, defendant has failed to show that it was entitled to judgment on either of these alternate grounds.

Reversed and remanded for further proceedings not inconsistent with this opinion. We do not retain jurisdiction.

/s/ Mark J. Cavanagh
/s/ Richard A. Bandstra
/s/ Donald S. Owens